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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,807	12/13/2000	Jeremy Lawrence	81862.P178	2439

8791 7590 12/06/2006

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EXAMINER

CHEN, ALAN S

ART UNIT PAPER NUMBER

2182

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/738,807	<b>Applicant(s)</b> LAWRENCE, JEREMY	
	<b>Examiner</b> Alan S. Chen	<b>Art Unit</b> 2182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10/2/2006.
- 2a) ☐ This action is FINAL.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 47-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 47-60 and 66-69 is/are allowed.
- 6) ☒ Claim(s) 61-65 is/are rejected.
- 7) ☒ Claim(s) 61-65 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/02/2006 has been entered.

### ***Response to Arguments***

2. Applicant's arguments based on the newly submitted amendments, filed 10/02/2006, with respect to claims 47-69 have been fully considered and are persuasive. The 35 U.S.C §102 and §112 of rejection of claims 47-69 have been withdrawn.

### ***Claim Objections***

3. Claims 61-65 are objected to because of the following informalities: conditional language is used in the preamble, e.g., "if executed by a processor", which no action is required if the conditional statement is false, e.g., if the machine-readable medium provides instructions *but are not* executed. Examiner recommends changing the preamble to read, "A machine-readable storage medium providing instructions, when executed by a processor, cause...". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Art Unit: 2182

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 61-65 are rejected under 35 U.S.C. 101 because the claims contain elements embodied outside the four statutory categories. In view of Applicant's disclosure, page 11, lines 13-17, the "machine-accessible medium" is not limited to elements that fall into the four statutory categories, instead being defined using open-ended language as including both proper 35 U.S.C. §101 statutory category elements (ROM, RAM, flash/magnetic storage devices) and improper 35 U.S.C. §101 statutory category elements (carrier waves and signals). As such, the claim is not limited to statutory subject matter and is therefore non-statutory. To overcome this rejection the claims need to be amended to include only the physical computer media and not include communication/transmission media or other media that falls outside of the four statutory categories. Examiner suggest using the language "machine-readable storage medium" to overcome this rejection.

***Allowable Subject Matter***

6. Claims 47-60 and 66-69 are allowed.

The following is the statement of reasons for the indication of allowable subject matter: The prior art disclosed by the applicant and cited by the Examiner fail to teach or suggest, alone or in combination, ***all*** the limitations of the independent claim(s) (claims 47, 52, 56 and 66), particularly a network having both core data links and customer data links, the customer data links having two distinct types of links, VPN and non-VPN data links. Management commands that are sent from a management

Art Unit: 2182

module are transferred over a dedicated VPN customer data link used strictly for management commands.


### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan S. Chen whose telephone number is 571-272-4143. The examiner can normally be reached on M-F 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim N. Huynh can be reached on 571-272-4147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ASC  
12/02/2006

  
12/2/06